



CF0000061139

GA 2244/96

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APPEAL OF PRISONER

Division Bench (Criminal)

4608/54..... Name मंगलू उर्फ बुटू

..... कंचन सिंह

Age 33 वर्ष

Sented to On 11/10/96

Under section by माननीय सज्जन अद्वैत न्यायाधीश, रायपुर, मध्य प्रदेश

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement
- 2 Date on which copy received
- 3 Date on which Appeal sent 28/11/96
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. 4608/54..... Name मंगलू उर्फ बुटू कंचन सिंह

Confined in जेल रायपुर, मध्य प्रदेश

No. 888 Dated 28/11/1996

Forwarded to the CHIEF JUDICIAL MAGISTRATE अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय मध्य प्रदेश जयपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न: - सत्र प्रकरण क्रमांक-398/93 की प्रमाणित निष्पत्ति प्रतिलिपि - एक।

Superintendent
Jail

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 1996

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Division Bench: - Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ. 2-3-2006 Mrs. Kiran Jain, counsel for the appellant. Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent. Oral judgment dictated on <i>Dais</i>. Per L.C. Bhadoo, J: - By this appeal under Section 374 (2) of the Code of Criminal Procedure, the appellant has questioned legality & correctness of the judgment of conviction and order of sentence dated 11th October, 1996, passed by the 7th Additional Sessions Judge, Raipur, in Sessions Trial No.398/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for three months. The case of the prosecution is that on 5-10-1992 at about 10 a.m. Cherku Ram (PW-7) lodged a report in Police Station: Gariaband to the effect that on 4-10-1992 at about 8 p.m. he was taking rest after taking dinner, he woke up on hearing the screams of woman & children, he came out of the house and saw that his brother-in-law's wife Shyama Bai & daughter Dev Kumari were weeping on	

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	which he went to the place where people were collected on the occasion of Durga festival and informed Dool Singh, Ramlal, Bhakla, Kejaw, Subat Marar, Bihari Marar & others. He told these persons that wife & daughter of Sukh Singh were weeping in the agricultural field of Ramlal. Then he along with all these persons went there and saw that his brother-in-law Sukh Singh @ Sobh Singh was lying dead and Shyama Bai & Dey Kumari were weeping. On enquiry from Shyama Bai, she replied that Manglu has murdered her husband and ran away. On further enquiry that as to how he has murdered, Shyama Bai replied that by stabbing with an arrow. It was also mentioned in the First Information Report that Sukh Singh and the accused used to quarrel on the ground of practicing witchcraft, three years before a quarrel took place between the two, Panchayat was convened at that time, both were leveling allegations against each other regarding practicing witchcraft, the villagers persuaded them to compromise the matter and they compromised. Thereafter, no dispute took place. The accused ran away after committing the crime, search was made, but the accused was not traced out. Son of the accused Alakh Ram, on enquiry, brought an arrow stained with blood and said that Sukh Singh has thrown away the said arrow after attacking the deceased, and the said arrow was kept by the villagers. Receiving this report, the Station House Officer proceeded to the scene of occurrence and after giving notice Ex.P-3 to the Panchas, prepared the Panchnama (Ex.P-4) of the body of Sobh Singh. Blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.P-1. The	

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	arrow in question was taken into possession under Ex.P-2, on being produced by Alakh Ram, son of the accused. One broken piece of arrow was also taken into possession under Ex.P-3. The body of Sobh Singh was sent for post-mortem examination to Community Health Centre, Gariaband, where Dr. A.S. Siddique (PW-17) conducted post-mortem, prepared the post-mortem report (Ex.P-5) and opined that the cause of death was vasovagal attack on account of the injury over pleura & lung and the death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused for commission of offence under Section 302 of the I.P.C. in the Court of Judicial Magistrate, First Class, Gariaband, who in turn committed the case to the Sessions Judge, Raipur, from where learned 7th Additional Sessions Judge received the case on transfer for trial. The prosecution has examined 19 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him. Learned Additional Sessions Judge after hearing the arguments of respective counsel for the parties convicted and sentenced the accused as mentioned in para 1 of this judgment. We have heard Mrs. Kiran Jain, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent. The homicidal death of Sobh Singh is not in dispute.	

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	As far as involvement of the accused/appellant in the crime in question is concerned, the crime was witnessed by Dev Kumari (PW-3), minor daughter of the deceased, aged about 7 years. In her evidence, she has categorically stated that at the time of incident, her father was standing at the gate and she was standing nearby him. Accused Manglu came, stabbed her father with arrow and after pulling the arrow ran away. Her father chased the accused while raising screams, but he could not catch him, he fell down in the field and died. In cross-examination, she has stated that she was standing at a distance of 5-6 feet. It is incorrect to say that she was able to identify the accused on account of darkness. As per the settled law, evidence of a child witness is to be scrutinized meticulously and before reposing confidence on the evidence, the Court has to ensure that the evidence of a child witness inspires full confidence and same should not be the outcome of tutoring or influence of anybody. Based on this principle, if we look into the evidence of this witness, looking to the time, presence of this witness was quite natural at the residence and the manner in which the offence was committed she has correctly narrated the same. As per the evidence of the mother of this child witness and other villagers, the body of Sobh Singh was found in the agricultural field. Dev Kumari (PW-3) has further stated that when the accused after stabbing the arrow pulled it and started running, then her father (deceased Sobh Singh) chased him and after some distance, he fell in the agricultural field. Even as per the	

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	evidence of Cherku Ram (PW-7) and other villagers who came from the place where Durga festival was being performed, the body of Sobh Singh was lying in the field. On enquiry from Dev Kumari (PW-3) as well as the wife of the deceased, they narrated that the accused stabbed the deceased and ran away. Being night and dense forest on the way, the matter was reported next day morning in which was it was mentioned that the author of the crime in question was the accused. Even as per the evidence of the villagers they went to the house of the accused in his search and he was found missing from the house. Even on the next day morning when these witnesses/villagers went to the house of the accused, he was not present in the house and son of the accused Alakh Ram produced the weapon of offence (arrow) stained with blood to the villagers they took it and produced before the Investing Officer. Alakh Ram, son of the accused has been examined as PW-11 and he has stated in his evidence that deceased Sobh Singh was his uncle, who has died, and Manglu, the accused/ appellant is his father. The Police came to his house and he gave the arrow in question and Ex.P-2 bears his signature. Therefore, in view of the above evidence, the evidence of Dev Kumari (PW-3) stands corroborated in material particulars. In cross-examination of this witness, defence has not been able to elicit any circumstance, which makes the evidence of this witness unreliable or untrustworthy.	

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	Learned counsel for the appellant submits that the incident happened at 8 p.m. therefore, it was not possible for Dev Kumari (PW-3) to identify the accused. It is admitted position that the accused/appellant is the uncle of Dev Kumari (PW-3) and she has stated in her evidence that she witnessed the crime from a distance of 5-6 feet when the accused stabbed her father with the arrow. Defence has not been able to bring on record any material to show that it was not possible for this witness to identify the accused from a distance of 5-6 feet at the given time. In the circumstances, involvement of the accused in the crime in question stands established, the same is based on legal evidence and to this extent, we do not find any illegality or infirmity in the judgment of the trial Court. Learned counsel for the appellant argued that the accused/appellant is in custody since last more than 13 years and the accused assaulted the deceased with an arrow once, that too being night time it cannot be said that the accused assaulted the deceased with intention to cause his death, particularly with intention to stab him on vital part. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. On the other hand, Mr. Bhatia, learned Panel Lawyer supported the judgment of the trial Court.	

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	From the prosecution evidence, it has come on record that the accused stabbed the deceased in the nighttime and that too once. Therefore, in all probability, it cannot be said that the accused assaulted the deceased with intention to cause his death. However, it can safely be inferred that the accused was having knowledge that by stabbing with arrow he was likely to cause the death of the deceased. Therefore, offence against the accused under Section 304 Part-I of the I.P.C. was made out. In the result, the appeal partly succeeds and the same is partly allowed. While setting aside conviction and sentence under Section 302 of the I.P.C. and acquitting the accused of that charge, the accused is convicted under Section 304 Part-I of the I.P.C. and sentenced to the period already undergone. The accused has already undergone more than 13 years' of sentence. Therefore, he is directed to be released forthwith, if not required in any other case. Parties are entitled for certified copy of this order.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge
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